

REMARKS

In response to the Office Action mailed February 22, 2006, Applicant respectfully requests reconsideration. To further the prosecution of this Application, Applicant submits the following remarks. The claims as now presented are believed to be in allowable condition.

Claims 1, 4-7, 11-15, 19, 22-25, 29 and 32-35 are pending in this Application. Claims 1, 11, 19 and 29 are independent claims.

Preliminary Matters

Applicants appreciate the courtesy extended applications representative enduring a telephone call on April 21, 2006. During the discussion, Applicant explained that the term "object-oriented software component" is used to refer to an individual component (such as an EJB, com object or the like). The Examiner stated that he interpreted the term "object oriented software component" to read on an application incorporating object oriented software. Applicants explained that the term "object-oriented software component" is intended to only refer to the individual components and not applications, and that this has been used in other patent applications to overcome similar rejections based on the term being used to include applications, such as U.S. Patent No. 6,934,934 (application number 09/482,178), U.S. Patent No. 6,859,922 (application number 09/645,279), U.S. Patent No. 7,000,224 (application number 09/548,203) as well as others. Nonetheless, in order to expedite allowance of the present application Applicant has included the term "usable to build an application" as part of the definition of an object-oriented software component. Given the fact that this term has been used in prior patent applications to distinguish an object-oriented software component from applications, Applicants submit that no new matter has been added, and that a new search is not required.

Rejections under §103

The Examiner rejected claims 1, 4-6, 11-15, 19, 22-24, 29, 32—33, 35, 37 and 38 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,891,802 to Hubbard (hereinafter Hubbard) and U.S. Patent No. 6,137,782 to Sharon et al. (hereinafter Sharon).

Claim 1 has been amended describe the software component as an object oriented software component usable to build an application. As discussed with the Examiner, Hubbard and Sharon fail to disclose or suggest that the target is an object oriented software component usable to build an application (e.g. an enterprise java bean (EJB)). The Examiner stated that Hubbard discloses wherein a target comprises a software component. Applicants respectfully disagree with the Examiners statement. A careful review of Hubbard at column 15, lines 27-59 (and Figure 5B) fails to disclose or suggest an object oriented software component. Hubbard discloses providing client systems with a workload task to index a portion of the information accessible on the network. Hubbard fails to disclose or suggest testing of an object oriented software component, instead Hubbard recites an agent (an application, not an object-oriented software component usable to build an application). Therefore, since claim 1 recites testing of an object oriented software component usable to build an application (e.g. an enterprise java bean or EJB) while Hubbard recites providing client systems with a workload task to index a portion of information on a network, claim 1 is believed allowable over Hubbard. Claims 11,

Claims 4-6, 12-15, 22-24 32-33 and 35 depend from claims 1, 11, 19 or 29 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, for the reasons stated above, the rejection of claims 1-6, 11-15, 19-24, 29-33, 35, 37 and 38 under 35 U.S.C. §103(a) as being unpatentable over Hubbard and Sharon is believed to have been overcome.

The Examiner rejected claims 7, 25 and 34 under 35 U.S.C. §103(a) as being unpatentable over Hubbard, Sharon and further in view of Mercury (White Paper titled "Load Testing to Predict Web Performance").

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Applicants submit that the combination of Mercury with Hubbard and Sharon is impermissible, and the rejection should be withdrawn. It is well-established that both the suggestion to combine the references and the reasonable expectation of success must be found in the prior art, *In re Vaeck*, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991). There is no reason to modify Hubbard or Sharon with Mercury absent the hindsight afforded by the claimed invention. "There must be a reason or suggestion in the art for selecting the procedure used, other than knowledge learned from the applicants disclosure." *In re Dow Chemical Co.*, 5 U.S.P.Q. 2d. One of ordinary skill in the art considering Hubbard and Sharon would have no reason to look for means for testing object oriented software components since the Hubbard and Sharon references are dividing workloads and distributing them to respective systems over a network. The Examiner is respectfully requested to withdraw the §103 rejection over Hubbard, Sharon and Mercury. Further, claims 7, 25 and 34 depend from claims 1, 19 and 29 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, the rejection of claims 7, 25 and 34 under 35 U.S.C. §103(a) as being unpatentable over Hubbard, Sharon and further in view of Mercury is believed to have been overcome.

Conclusion

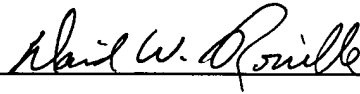
In view of the foregoing remarks, this Application should be in condition for allowance. A Notice to this affect is respectfully requested. If the Examiner believes, after this Response, that the Application is not in condition for allowance, the Examiner is respectfully requested to call the Applicant's Representative at the number below.

Applicant hereby petitions for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-3735.

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If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 616-9660, in Westborough, Massachusetts.

Respectfully submitted,

A handwritten signature in cursive script, reading "David W. Rouille", is positioned above a horizontal line.

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